

SERVICE DATE – JANUARY 28, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-511 (Sub-No. 2X)

CENTRAL RAILROAD COMPANY OF INDIANAPOLIS–
DISCONTINUANCE EXEMPTION–IN GRANT COUNTY, IN

Decided: January 25, 2002

By petition filed on October 10, 2001,¹ the Central Railroad Company of Indianapolis (CERA) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over a line of railroad that it operates under a lease with Norfolk Southern Railway Company (NSR).² The line, known as the Marion Branch, extends 5.22 miles between milepost TS-152.22, near Marion, and milepost TS-157.44, near West Marion Belt, in Grant County, IN. The discontinuance includes 0.3 miles of trackage rights over Pennsylvania Lines LLC (PL) between PL milepost MP-78.3 and PL milepost MP-78.6.³ The City of Kokomo, IN, has submitted a letter in support of the exemption request. We will grant the exemption, subject to standard employee protective conditions.

BACKGROUND

CERA operates over approximately 46.78 miles of rail line in north central Indiana under lease and operating rights arrangements. CERA leases from NSR a 31.48-mile rail line between milepost TS-152.22, near Marion, and milepost TS-183.7, at Kokomo, IN, which includes the Marion Branch. CERA also is the operator of a 15.3-mile line owned by Kokomo Grain Co., Inc., between milepost 132.0, at Marion, and milepost 147.3, at Amboy, IN. In addition, CERA operates as agent for and in the name of Winamac Southern Railroad Company (WSRY) over a rail line owned by WSRY between milepost 97.9, at Grand Jct., near Kokomo, and milepost

¹ Notice of the filing was served and published in the Federal Register on October 30, 2001 (66 FR 54799-54800).

² Also on October 10, 2001, CERA filed a motion for protective order with respect to a Letter Agreement dated May 15, 1998. The motion for protective order was granted in a decision served on October 23, 2001.

³ The PL mileposts equate to NSR mileposts TS-153.1 and TS-153.4, respectively.

74.5, at Logansport, IN; and between milepost 71.5, at Van Junction, IN, and milepost 51.0, at Brighthurst, IN.

In a letter dated September 4, 2001, NSR executed its right under the May 15, 1998 Letter Agreement⁴ with CERA's parent, RailTex, Inc. (RailTex),⁵ to require CERA to seek discontinuance of service over the Marion Branch. Once CERA discontinues service over the line, NSR will replace CERA and provide service. Consequently, CERA contends that no shipper will lose service as a result of the discontinuance.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by allowing CERA to discontinue operations on a line over which NSR will resume service [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Because service is being continued by the owner of the line, regulation is not necessary to protect shippers from the abuse of market power. Nevertheless, to ensure that the shippers are informed of our action, we will require CERA to serve a copy of this decision on all shippers on the line within 5 days of the service date of this decision and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed discontinuance is limited in scope.

⁴ See supra note 2.

⁵ RailTex acquired control of CERA and The Central Railroad Company of Indiana through the purchase of all of the stock of their noncarrier parent holding company, Central Properties, Inc., in RailTex, Inc.—Control Exemption—Central Properties, Inc., The Central Railroad Company of Indianapolis, and The Central Railroad Company of Indiana, STB Finance Docket No. 33585 (STB served June 26, 1998). RailAmerica, Inc., acquired control of RailTex in RailAmerica, Inc.—Control Exemption—RailTex, Inc., STB Finance Docket No. 33813 (STB served Jan. 10, 2000).

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

Because this is a discontinuance proceeding and not an abandonment, we need not consider offers of financial assistance (OFA) to acquire the line for continued rail service,⁶ trail use requests, or requests to negotiate for public use of the line. This proceeding is also exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b). Therefore, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by CERA of its operations as described above, subject to the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

2. CERA is directed to serve a copy of this decision on all shippers on the line within 5 days after the service date of this decision and to certify to us that it has done so.

3. An OFA under 49 CFR 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by February 7, 2002, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

⁶ The OFA provisions for a subsidy to provide continued rail service do apply to discontinuances.

5. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on February 27, 2002. Petitions to stay must be filed by February 12, 2002. Petitions to reopen must be filed by February 22, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary